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 CLERK
 U.S. DISTRICT COURT
 NO. DIST. OF CA. S.J.

6 Attorneys for Adversary Defendant
 7 A. C. SPICER, TRUSTEE IN BANKRUPTCY

8 UNITED STATES BANKRUPTCY COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

11 IN RE:) No. 02-50653-ASW
 12 GIUSEPPE ENZO CECCONI,) ANCILLARY PROCEEDING
 13 Debtor.) Adversary Proceeding No. 03-5024-ASW

14
 15 SARAH CECCONI,) Plaintiff,
 16 v.)
 17 GIUSEPPE ENZO CECCONI and A. C.)
 18 SPICER, TRUSTEE IN BANKRUPTCY,)
 19 Defendants.

3
 20 A. C. SPICER, TRUSTEE IN BANKRUPTCY,)
 21 Counterclaimant,
 v.)
 22 SARAH CECCONI,) Counter-Defendant.

23
 24 A. C. SPICER, TRUSTEE IN BANKRUPTCY,)
 25 Cross-Claimant,
 v.)
 26 GIUSEPPE ENZO CECCONI,)
 27 Cross-Defendant.

2
 APPELLANT'S STATEMENT OF
 ISSUES PRESENTED ON APPEAL

1 Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, appellant A. C.
 2 Spicer, the adversary defendant in the above-entitled action, briefly states the nature of the
 3 adversary proceeding from which this appeal is taken and the issues to be presented on appeal as
 4 follows:

5 **NATURE OF THE ADVERSARY PROCEEDING**

6 Adversary defendant and appellant A. C. Spicer (“Spicer”) is the Trustee in Bankruptcy of
 7 the estate of debtor Giuseppe Enzo Cecconi (hereafter, “Mr. Cecconi”) pending in London,
 8 England. Spicer commenced an ancillary proceeding in the Bankruptcy Court to recover the 4.52
 9 acre parcel of real property in Pebble Beach, California (the “Property”) owned by the Cecconi
 10 Residential Trust for the benefit of Mr. Cecconi and adversary plaintiff and appellee, Sarah
 11 Cecconi (hereafter, “Mrs. Cecconi”), as their community property. Mrs. Cecconi intervened and
 12 commenced the adversary proceeding from which this appeal is taken, seeking a declaration by the
 13 Bankruptcy Court that the Property is her sole and separate property.

14 In the adversary proceeding, Mrs. Cecconi claimed that a purchase money resulting trust for
 15 her benefit arose when the Property was purchased in 1985 with her separate property funds, and
 16 that the Property is now and always has been her sole and separate property despite the fact that she
 17 took title in her and her husband’s names as “community property” upon acquisition in 1985 and
 18 continuously held title in their joint names as community property until the Property was
 19 transferred to the Cecconi Residential Trust in 1998 for their joint benefit.

20 A motion for summary judgment made by Spicer in 2004 was denied, and a court trial
 21 commenced on March 21, 2005. The Bankruptcy Court Judge filed his Memorandum Decision
 22 Following Trial on April 17, 2007, finding that Mr. Cecconi held his interest in the Property in a
 23 resulting trust for Mrs. Cecconi’s benefit, that the Property is her sole and separate property and
 24 that neither Mr. Cecconi nor the Trustee in Bankruptcy has any interest in the Property. Judgment
 25 was entered on July 2, 2007 and notice of Spicer’s appeal was filed on July 12, 2007.

26 **STATEMENT OF ISSUES PRESENTED ON APPEAL**

27 Spicer intends to raise the following issues on appeal, including any sub-issues integral to
 28 the issues stated:

1 1. Whether any purchase money resulting trust that arose in 1985 was extinguished as
 2 a matter of law by the transfer of the Property to an express trust, the Cecconi Residential Trust, at
 3 the direction of Mrs. Cecconi in 1998.

4 2. Whether the express declaration of Mrs. Cecconi in the Cecconi Residential Trust
 5 that the Property "is the community property" of herself and her husband and the conveyance at her
 6 direction of the Property to the Cecconi Residential Trust resulted in a transmutation of any
 7 separate property interest she previously believed or intended to exist in the Property.

8 3. Whether the reimbursement of Mrs. Cecconi for her costs of acquiring and
 9 developing the Property from the proceeds of a loan from a Florida Bank in 1990 for which both
 10 Mr. and Mrs. Cecconi were jointly liable and their concurrent conveyance of the Property by a
 11 deed of trust to the lender as security for the indebtedness at the direction of Mrs. Cecconi
 12 extinguished any previously existing resulting trust for Mrs. Cecconi's benefit.

13 4. Whether the California presumption that a gift was intended applies to real property
 14 paid for by a spouse when title is taken jointly with the other spouse without regard to whether the
 15 wife or the husband was the payor spouse.

16 5. Whether the conveyance by Mrs. Cecconi of her community property interest in the
 17 Property to the Sarah C. Cecconi Living Trust in 1994 extinguished any resulting trust that may
 18 have arisen in 1985 or constituted a ratification of the community property character of the
 19 Property.

20 6. Whether Spicer as Trustee in Bankruptcy was entitled to summary judgment based
 21 on the undisputed facts before the Bankruptcy Court in support of his motion, and whether the
 22 order entered on summary judgment should have been clarified on Spicer's motion to reflect only
 23 the issues that were before the Bankruptcy Court as stipulated by the parties.

24 7. Whether the Bankruptcy Court's finding that Mrs. Cecconi established the existence
 25 of a resulting trust by clear and convincing evidence is clearly erroneous based on the entire record
 26 as a whole, including, without limitation, her lack of recollection of the circumstances in which she
 27 took title as community property jointly with her husband at the time of acquisition in 1985, her
 28 subsequent ratification and acknowledgement of her husband's community property interest, the

1 contemporaneous documentary evidence that the Property was intentionally maintained as
2 community property to obtain substantial tax advantages on the advice of her lawyers and financial
3 advisors, the contradictory testimony given by her and her husband, her intentional alteration of
4 documents by deletion of her husband's name and other irretrievable information and her failure to
5 conduct a reasonable search for, and to produce, documents relevant to her claim.

6 8. Whether the Bankruptcy Court's findings and conclusions that terminating or
7 adverse inference sanctions are not justified by the facts or law in this case are supported by the
8 evidence and applicable law and whether the denial of such sanctions is an abuse of discretion or
9 clearly erroneous.

10 DATED: July 20, 2007

SHARTSIS FRIESE LLP

12 By: /s/ Mary Jo Shartsis
13 MARY JO SHARTSIS

14 Attorneys for Adversary Defendant
15 A. C. SPICER, TRUSTEE IN BANKRUPTCY

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